

REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks. Prior to the Office Action, claims 1-15 were pending. Through this Reply, claims 16-44 are added. Therefore, claims 1-44 are presented for examination. Claims 1, 9, 10, 25 and 40 are independent.

§ 103 REJECTION – NISHIKAWA, BELUCCI, FUJIMOTO

Claims 1-6 and 8-15 stand rejected under 35 USC 103(a) as allegedly being unpatentable over Nishikawa et al. (USP 5,296,945) in view of Belucci et al. (USP 5,913,542) and in further view of Fujimoto et al. (USP 6,035,074). *See Office Action, items 2-3.* Applicant respectfully traverses.

For a Section 103 rejection to be proper, a *prima facie* case of obviousness must be established. *See M.P.E.P. 2142.* One requirement to establish *prima facie case* of obviousness is that the prior art references, when combined, must teach or suggest all claim limitations. *See M.P.E.P. 2142; M.P.E.P. 706.02(j).* Thus, if the cited references fail to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, independent claim 1 recites, in part “wherein said automatic correcting device ... abstracts a person area based on the background area.” For the reasons stated below, Nishikawa and Belucci,

individually or in combination, cannot be relied upon to teach or suggest at least this feature.

First, regarding Nishikawa, the Examiner readily admits that Nishikawa cannot be relied upon to teach or suggest detecting a person area within an image data. *See Office Action, page 2, item 3, lines 5-6 of 2nd paragraph.* Thus, it logically follows that Nishikawa cannot be relied upon to teach or suggest the feature of abstracting the person area based on the background area.

Belucci has not been, and indeed cannot be, relied upon to correct for at least this deficiency of Nishikawa. Also, Fujimoto has not been, and indeed cannot be, relied upon to correct for at least this deficiency of Nishikawa. As will be demonstrated below, Fujimoto actually teaches away from this feature.

Fujimoto states that “when a plurality of areas having color data conforming to any of the face recognition data are recognized in the color image, an area having the greatest size is extracted as the face image area.” *Emphasis added.* In other words, Fujimoto directly determines a face as being an area of the image that most closely resembles a facial color. The direct determination of the facial area clearly contradicts – teaches away – from the feature of abstracting the person area based on the background area.

Thus, for at least this reason, independent claim 1 is distinguishable over the combination of Nishikawa, Belucci and Fujimoto. However, claim 1 is distinguishable for the following reason as well. Claim 1 also recites, in part

“changes the size of the image so that the size of the person area is the predetermined size.” The Examiner did not, and indeed could not, rely upon either Nishikawa or Fujimoto to teach or suggest this feature.

However, contrary to the Examiner’s allegation, Belucci also cannot be relied upon teach or suggest this feature. In the Office Action, the Examiner alleges that Belucci teaches resizing the image so as to fit the area required for the photo of the ID card. When resizing the image in such a manner, the Examiner alleges that Belucci inherently discloses that the image is being compared to the size of the image area required for the ID card.

For sake of argument, Applicant assumes that the Examiner's allegation is taken to be true. However, even if the Examiner’s allegation is taken to be true, it merely teaches that the entire image is resized to fit a particular size. Resizing the entire image to a particular size is not equivalent to resizing image so that the person area within the image is a predetermined size.

For at least the reasons stated above, independent claim 1 is distinguishable over the combination of Nishikawa, Belucci and Fujimoto.

Independent claim 9 recites, in part “abstracting a person area in said image data based on the background area” and “changing the size of the image so that the size of the person area is the predetermined size.” It has been clearly demonstrated that the combination of Nishikawa, Belucci and Fujimoto cannot be relied upon to teach or suggest either of these features. Therefore,

independent claim 9 is distinguishable over the combination of Nishikawa, Belucci and Fujimoto.

Independent claim 10 recites, in part “an abstracting device configured to determine a person area of the original image data based on a background area” and “an image size correcting device configured to change a size of the person area based on a predetermined image size.” It has been clearly demonstrated that the combination of Nishikawa, Belucci and Fujimoto cannot be relied upon to teach or suggest either of these features. Therefore, independent claim 10 is distinguishable over the combination of Nishikawa, Belucci and Fujimoto.

Claims 2-6, 8 and 11-15 depend from independent claims 1 or 10 directly or indirectly. Therefore, for at least the reasons stated above with respect to independent claims 1 or 10, these dependent claims are also distinguishable over the combination of Nishikawa, Belucci and Fujimoto.

Applicant respectfully requests that the rejection of claims 1-6 and 8-15 based on Nishikawa, Belucci and Fujimoto be withdrawn.

§ 103 REJECTION – NISHIKAWA, BELUCCI, FUJIMOTO, O'BRILL

Claim 7 stands rejected under 35 USC 103(a) as allegedly being unpatentable over Nishikawa in view of Belucci and Fujimoto and in further

view of O'Brill (USP 5,937,081). *See Office Action, item 4.* Applicant respectfully traverses.

It is noted that claim 7 depends from independent claim 1 and it has been shown above that claim 1 is distinguishable over the combination of Nishikawa, Belucci and Fujimoto. O'Brill has not been and indeed, cannot be relied upon to correct for at least the above-noted deficiencies of Nishikawa, Belucci and Fujimoto. Therefore, independent claim 1 is distinguishable over the combination of Nishikawa, Belucci, Fujimoto and O'Brill.

For at least due to the dependency thereon, claim 7 is also distinguishable over the combination of Nishikawa, Belucci, Fujimoto and O'Brill.

Applicant respectfully requests that the rejection of claim 7 based on Nishikawa, Belucci, Fujimoto and O'Brill be withdrawn.

NEW CLAIMS

Claims 16-44 are added through this reply. All new claims are believed to be distinguishable over the cited references, individually or in any combination.

New claims 16-24 and 35-39 depend from independent claims 1, 9 or 10 directly or indirectly.

New independent claim 25 recites, in part “determining a person area of the image as an area of the image other than the background area of the image” and “sizing the image such that the person area of the image is a predetermined person area size.”

New dependent claims 26-34 depend from independent claim 25 directly or indirectly.

New independent claim 40 recites, in part “abstracting a person area in the image data based on the background area.”

New dependent claims 41-44 depend from independent claim 40 directly or indirectly.

Applicant respectfully requests that the new claims be allowed.

CONCLUSION

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Should there be any outstanding matters that need to be resolved, the Examiner is respectfully requested to contact Hyung Sohn (Reg. No. 44,346), to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit

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Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16
or 1.17; particularly, extension of time fees.

Respectfully submitted,

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Attachment(s):